

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

In the Matter of Application 24739)
of David S. Adams and Sons, Inc.,)
to Appropriate from an Unnamed) Decision 1458
Stream in Marin County.)

DECISION DENYING APPLICATION

BY BOARD VICE CHAIRMAN MAUGHAN:

David S. Adams and Sons, Inc., having filed Application 24739 for a permit to appropriate unappropriated water; protests having been received; a public hearing having been held before the State Water Resources Control Board on March 11, 1976; applicant, protestants, and interested parties having appeared and presented evidence; the evidence received at the hearing having been duly considered, the Board finds as follows:

Substance of Application and Project

1. Application 24739, as amended by the applicant at the hearing, is for a permit to appropriate 0.07 cubic feet per second (cfs) by direct diversion, not to exceed 40 percent of the streamflow (RT 95), from January 1 to December 31 of each year for domestic use for an existing subdivision, Paradise Ranch Estates, from an unnamed stream (aka Fish Hatchery Creek) in Marin County. The requested point of diversion (POD) is within the NW $\frac{1}{4}$ of NE $\frac{1}{4}$ of projected Section 34, T3N, R9W, MDB&M. The applicant plans to build an eight-foot wide jeep trail for access to the point of diversion which it owns, treatment facility, diversion works and associated pipeline structures.

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2. The existing water supply for Paradise Ranch Estates is from wells and is of inadequate quantity and quality. The applicant is responsible for providing water to the subdivision and has demonstrated that it can put an additional supply to beneficial use and has the financial ability to do so (RT 22). Other than wells and springs, which are not favored by the County Department of Environmental Health (RT 72), the only potential source of a supplemental water supply for the subdivision is the North Marin County Water District. Connection to this supply would be, it was shown, substantially more costly than implementation of this project (RT 19 et seq., 24).

Protestants

3. The application was protested by eight parties, six of whom appeared at the hearing. Most of the protests were based on environmental considerations, discussed infra. Two protestants and one interested party actually use water from Fish Hatchery Creek. Seth Wingate and Catherine Hapsburg-Lorraine divert relatively small quantities of water under claim of riparian right for household and garden use. Mr. Wingate diverts 500 gallons per day (gpd) throughout the year; Mrs. Hapsburg-Lorraine diverts a minor quantity. Their diversions are described in Statements of Water Diversion and Use S8713 and S8673.

Waldo Giacomini is the last diverter on the stream. He has a license to divert 0.5 cfs from May 30 to September 30 of each year for irrigation and stockwatering and 7,800 gpd from April 1 to May 30 and October 1 to December 30 for stockwatering under License 9730 issued on Application 21371. His priority dates to 1963. Mr. Giacomini irrigates 30 acres of pasture by flooding. During the last few years the amount of water available to Mr. Giacomini for irrigation has diminished (RT 145-147).

Environmental Considerations and Availability of Unappropriated Water

4. Fish Hatchery Creek is a spring fed perennial stream draining a steep, moist, narrow canyon. The creek flows west to east from a watershed of approximately 1.2 square miles. The watercourse is restricted to the moist, V-shaped channel which is joined by several lesser tributaries. Its banks are lined with lush, riparian vegetation. After leaving the canyon, the stream opens onto the floor of Olema Valley, an open valley south of Tomales Bay. At this point the natural channel is lost as the stream is dissipated onto the pasture land of Mr. Giacomini. This property is separated from Tomales Bay by a levee system with a floodgate that allows water to pass into Tomales Bay but closes to prevent any return flow from the Bay. No gaging station exists on Fish Hatchery Creek but several measurements have been made and are shown in the following table.

<u>Date</u>	<u>Flow cfs</u>	<u>Approximate Location</u>	<u>Measurement By</u>
March 16, 1971	2 (estimate)	Giacomini POD	SWRCB
January 21, 1975	0.38	2500 ft. below applicant's POD	Arthur Lang, C.E.
July 2, 1975	0.32	3000 ft. below applicant's POD	DF&G
July 17, 1975	0.31	3000 ft. below applicant's POD	DF&G
August 21, 1975	0.20	3000 ft. below applicant's POD	DF&G
September 5, 1975	0.18	3000 ft. below applicant's POD	DF&G
October 2, 1975	0.13	3000 ft. below applicant's POD	DF&G
December 22, 1975	0.21	3000 ft. below applicant's POD	SWRCB

The flow was not measured at the Giacomini POD in 1975. However, on December 22 it was about the same magnitude as the flow measured below the applicant's POD.

There is a resident population of rainbow trout in Fish Hatchery Creek, estimated by the Department of Fish and Game to be between 500 and 700 (RT 87 et seq.). Any significant diversion of water during the summer and fall will place a serious stress on the fish resource, already under stress because of the low natural flows (RT 92 et seq.). Diversion as proposed in Application 24739 is likely to result in the loss of the resource as a viable self-sustaining fish population (RT 94).

5. There is insufficient water available to satisfy the needs of the applicant and downstream vested rights and to maintain a viable fishery resource.

6. Unappropriated water is not available to supply the applicant in the seasons and amounts requested.

From the foregoing findings, the Board concludes that Application 24739 should be denied.

IT IS HEREBY ORDERED that Application 24739 be and is denied.

Dated: July 15, 1976

W. DON MAUGHAN
W. Don Maughan, Vice Chairman

JOHN E. BRYSON
John E. Bryson, Chairman

W. W. ADAMS
W. W. Adams, Member

ROY E. DODSON
Roy E. Dodson, Member

JEAN AUER
Jean Auer, Member